



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,262	01/10/2002	Chris Chapel	2001-037	7875

7590 03/09/2005

David M. Dingeman
550 Trees Drive
Cedar Hill, TX 75104

EXAMINER

LUDWIG, MATTHEW J

ART UNIT	PAPER NUMBER
----------	--------------

2178

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/044,262

Applicant(s)

CHAPEL ET AL.

Examiner

Matthew J. Ludwig

Art Unit

2178

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is responsive to communications: Application filed 1/10/02.
2. Claims 1-13 are pending in the case. Claims 1, 6, and 10, are independent claims.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 1 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards at the invention.**

In reference to independent claim 1, the limitation recites ‘automatically exporting at least one design element’. There is insufficient antecedent basis for this limitation in the claim. The word ‘automatically’ fails to provide the Examiner with a detailed description of the limitation. Within a computer system there are many functions performed automatically. The term, automatically, is not needed within the claim language. Furthermore, it is unclear to the Examiner where the exporting is taking place and what is being exported. Clearly defining design data, design element, and user input, would provide the Examiner with a better understanding of the claim as a whole.

In reference to dependent claim 5, the limitation recites the step of ‘retrieving data includes *automatically* importing data from a *precision estimating application*’. There is insufficient antecedent basis for this limitation in the claim. The Examiner’s suggestion of changing said

Art Unit: 2178

phrase to 'retrieving data includes importing data from an estimating application' will overcome this rejection.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claim 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated over McCormick, USPN 5,893,082 filed (12/23/1996).**

In reference to independent claim 1, McCormick teaches,

An estimator selects any desired number of takeoff windows relating to the assembly record information list of the assembly database and/or the item record information list of the item database (compare to “*storing in a database, design data, said design data including at least one material list quantity associated with the electronic design*”). See column 4, lines 60-67.

Once entered into the computer system, the counts and/or measurements are processed to provide various estimates relating to a construction project, such as the number or numbers of a particular assembly (compare to “*exporting a design element*”). See column 6, lines 9-20.

The estimator using the estimating hardware for direct interaction with the plan print or the keyboard for a visual interaction with the plan print can enter a count or scale a measurement relating to any of the assemblies or items in any of the takeoff windows (compare to “*associating*”).

retrieved design data with user input data; and displaying to the user, the design data associated to the user input data”). See column 5, lines 40-67. Because the claim limitations are to be given their broadest reasonable interpretation within the scope of the art, the plan print, and more specifically, the counts or measurements teaches a generic association between retrieved design data with user input data.

In reference to dependent claim 2, McCormick teaches:

The memory unit includes at least one assembly database of stored assembly information and at least one item database of stored item information. The information record lists in these databases frequently contain tens of thousands of data items. See column 2, lines 37-47.

In reference to dependent claim 3, McCormick teaches:

The estimator then selects any desired number of takeoff windows relating to the assembly record information list of the assembly database and/or the item record information list of the item database and opens the selected takeoff windows for use in cost estimating purposes. See column 4, lines 57-67.

In reference to dependent claim 4, McCormick teaches:

The memory unit of the computer system includes at least one assembly database and at least one item database related to the assembly database. The assembly record information list of the assembly database contains a numerical listing of the potential assemblies, which would be used on a construction project. See column 4, lines 20-49.

In reference to dependent claim 5, McCormick teaches:

The estimator using the estimating hardware for direct interaction with the plan print or the keyboard for a visual interaction with the plan print or the keyboard for a visual interaction

Art Unit: 2178

with the plan print can enter a count or scale a measurement relating to any of the assemblies or items in and of the takeoff windows. See column 5, lines 39-59.

In reference to claim 6-13, the claims reflect the system comprising instructions used for performing similar methods as claimed in 1-5, and in further view of the following, are rejected along the same rationale.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Finney USPN 6,324,508 filed (5/19/00)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Ludwig whose telephone number is 571-272-4127. The examiner can normally be reached on 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Hong can be reached on 571-272-4124.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

Art Unit: 2178

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ML

February 25, 2005



STEPHEN HONG
SUPERVISORY PATENT EXAMINER